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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street N.W.
Washington, D.C. 20536

File: WAC 02 031 57273 Office: California Service Center Date: SEP 29 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a minister at an annual salary of $24,000.

The director denied the petition finding that the petitioner had failed to establish that: (1) the beneficiary had been continuously engaged in a qualifying religious occupation for the two-year period immediately preceding the filing of the petition; and, (2) it had the ability to pay the proffered wage.

On appeal, counsel for the petitioner asserts that the evidence previously submitted is sufficient to establish the beneficiary's qualifying experience and the petitioner's ability to pay. Counsel further asserts that the statute and regulations do not explicitly require that the beneficiary's work experience must have been full-time paid employment in order to be qualifying.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter, [redacted] seeks to employ the beneficiary as a minister of religion at the [redacted] church in Norwalk, California. The petitioner states that [redacted] and [redacted] are part of the [redacted] the largest indigenous Pentecostal movement in India.

The beneficiary is a native and citizen of India who was last admitted to the United States on April 25, 2001 as a nonimmigrant religious worker (R-1), with authorization to remain until September 30, 2003.[1]

The first issue to be addressed in this proceeding is whether the petitioner has established the ability to pay the beneficiary the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

In this case, the petitioner has submitted audited financial statements for the years ending December 31, 2000 and 2001. Based on the evidence submitted, the AAO concludes that the petitioner had the ability to pay the proffered wage at the time the petition was filed and continuing until the beneficiary obtains lawful permanent residence. Therefore the director's decision with regard to this issue is withdrawn.

The second issue to be addressed is whether the petitioner has established that the beneficiary was continuously carrying on the occupation of minister for the two-year period immediately preceding the filing of the petition.

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[1] An alien with at least two years membership in a religious denomination may qualify for nonimmigrant R-1 classification under section 101(a)(15)(R) of the Act without a showing of prior work experience. For special immigrant classification under section 101(a)(27)(C) of the Act, the alien must also establish at least two years of experience in the position being offered.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

The petition was filed on October 19, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least October 19, 1999.

The record contains the following information regarding the beneficiary's work experience during the qualifying two years as follows:

- *October 20, 1999 through December 31, 1999:* The beneficiary performed full-time services as pastor of an IPC church in India. The record does not indicate the amount of the salary and contains no corroborative evidence to establish that the beneficiary was, in fact, paid for his services.

- *January 2000 through April 5, 2000:* The beneficiary served as church relations coordinator of the India Bible College, Kumbanad, Kerala, India. The college states that it paid the beneficiary a salary through December 2000. Again, the record does not indicate the amount of the salary and contains no corroborative evidence to establish that the beneficiary was, in fact, paid for his services.

- *April 6, 2000 through October 5, 2000:* The beneficiary was admitted to the United States as a nonimmigrant visitor for business (B-1), having been invited by the North American Western Division of the IPC in Auburn, Washington, to speak to its churches concerning the missions, needs, and opportunities of the Pentecostal Young

People's Association (PYPA) in India.[2] On June 15, 2000, the IPC instructed the beneficiary to take charge as pastor of the ICA in Norwalk, California.

- *October 6, 2000 through November 28, 2000:* The beneficiary was awaiting CIS adjudication of an application, filed on September 25, 2000, for change of his non-immigrant status from B-1 to R-1. The application was approved on November 28, 2000.

- *November 29, 2000 through October 19, 2001:* The beneficiary performed services as an R-1 nonimmigrant. The record contains evidence that that the beneficiary was paid $2,000 per month by the petitioner from April 2001 through December 2001. The record does not indicate the beneficiary's salary, or any corroborative evidence to establish that he was, in fact, paid for his services prior to April 2001.

On appeal, counsel states that non-precedent decisions have held that the beneficiary's qualifying experience need not have been full-time and salaried in order to qualify for special religious worker classification. The decisions cited by counsel have no precedential effect. Only decisions designated as precedents are binding on CIS employees. *See* 8 C.F.R. § 103.3(c).

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. *See* H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean

[2] The evidence submitted indicates that the beneficiary was the general secretary, an elected but non-salaried position, of the PYPA from 1993 through 1999.

that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963); *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To be otherwise would be outside the intent of Congress.

Here, the record contains insufficient corroborative evidence that the beneficiary was paid any wages by the petitioning organization during the two years immediately preceding the filing of the petition. The petitioner has not established that the beneficiary has ever received any wages from the petitioner or from any other religious organization in return for any kind of religious work, other than for the period from April 2001 through December 2001. The petitioner has not provided sufficient evidence to establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. Therefore, the petition must be denied.

Beyond the decision of the director, it is noted that in a letter dated March 23, 1993, the Internal Revenue Service (IRS) determined the petitioner to be tax-exempt under section 501(c)(3) of the Internal Revenue Code (IRC). The letter indicates, however, that the basis for this status is that the petitioner is an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi) of the IRC, and not that of a religious organization. Organizations recognized by the IRS under section 170(b)(1)(A)(vi) of the IRC do

not qualify as religious organizations. As the appeal will be dismissed on the grounds discussed, this issue will not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.